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In the

Supreme Court of the United States

OCTOBER TERM 1966

No. 833

In The Matter of

HARLAN E. GRIMES,

Petitioner.

PETITION FOR WRIT OF CERTIORARI

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To The United States Court of Appeals for The Tenth Circuit:

Petitioner, Harlan E. Grimes, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above entitled case on July 28, 1966.

I. CITATION TO OPINION BELOW

The opinion of the Court of Appeals, printed in Appendix "A", page A-1, is reported in 364 F. 2d 654 (10th Cir. 1966)

II. JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 28, 1966. Petitioner's Motion for Rehearing was denied on September 7, 1966. The jurisdiction of this court is invoked under 28 U.S.C., Sec. 1248 (1).

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III. QUESTIONS PRESENTED

1. Whether Petitioner, Admitted to Practice in the State of Oklahoma, but Disbarred from the Practice of Law in That State by the Supreme Court of Oklahoma Because of Statements that Certain Members of the Supreme Court of Oklahoma Were Guilty of Accepting Bribes, Should be Subsequently Disbarred by the Tenth Circuit Court of Appeals After Petitioner's Statements About the Bribery Are Proved to be True and Three Members of the Supreme Court of Oklahoma Were Convicted of Charges Arising Out of the Bribes.

2. Whether the Tenth Circuit Court of Appeals Has the Right to Disbar the Petitioner in the Tenth Circuit After It Learned That Petitioner Had Told the Truth Concerning the Acceptance of Bribes by Certain Members of the Supreme Court of Oklahoma.

3. Whether the Tenth Circuit Court of Appeals Has the Right to Disbar the Petitioner Because After the Tenth Circuit Court of Appeals Entered Its Order to Petitioner to Show Cause Why He Should Not be Disbarred Because of His State of Oklahoma Disbarment, The Petitioner In Official Proceedings Repeated Statements About Bribe Involvement of Other Justices of the Supreme Court of Oklahoma Who Have Not Been Convicted of Charges Arising Out of Bribes.

4. Whether Petitioner Furnished sufficient Information to the Tenth Circuit Court of Appeals to Show That He Had Probable Cause to Believe that Unconvicted Members of the Supreme Court of Oklahoma Were Guilty of Accepting Bribes.

5. Whether the Petitioner a Private Citizen Has the Burden to Prove Beyond a Reasonable Doubt That Unconvicted Judges of the Supreme Court of Oklahoma Were Guilty of Accepting Bribes.

IV. CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The constitutional provisions involved in this case are the First and Fourteenth Amendment to the Constitution of the United States.

2. The statutory provision involved is Article IV, *The Revised Rules Creating, Controlling and Regulating the Oklahoma Bar Association*, Title 5, Okl. St. Ann. Appendix P, as Amended and Promulgated by the Supreme Court of Oklahoma on October 6, 1958. These rules are printed in Appendix B, infra.

IV. STATEMENT

I. Introduction

The background giving rise to this case is a most unusual one. The background is the sordid and revolting situation that has existed in the Supreme Court of Oklahoma. It is now known that certain judges of the Oklahoma Supreme Court have been guilty of accepting bribes for the purpose of purchasing their votes on opinions. Three of these judges have been convicted of charges arising as a result of their acceptance of bribes. The background of this situation is a black and tangled one. Only a summary can be given within the confines of this petition.

The essence of the case at bar is that petitioner, Harlan E. Grimes, a member of the bar of the State of Oklahoma

since 1928, learned certain facts about bribes being paid to judges of the Oklahoma Supreme Court as long as 25 years ago and has attempted since that time to get something done about the corrupt and intolerable situation. But no public official in the State of Oklahoma undertook any steps to correct this situation. Instead petitioner Grimes was disbarred from the practice of law by a per curiam order of the Oklahoma Supreme Court promulgated by the judges who now stand convicted on charges arising out of the bribes that petitioner had been saying they were receiving. The essential question before this Honorable Court is whether the disbarrment of petitioner by the Oklahoma Supreme Court under these circumstances should also lead to his disbarrment by the Tenth Circuit Court of Appeals.

II. Background Facts

In 1940 petitioner participated as attorney before the Oklahoma Supreme Court in the case of *State ex rel Grimes, et al. v. Board of Education of Oklahoma City, et al.*, 99 P. 2d 876, (Sup. Ct. Okla. 1940) in which case the decision went against him in an opinion in which seven judges concurred with two dissenting.

In February 1941, petitioner acquired information which led him to conclude that the 1940 decision in the above case was corrupt and the result of a bribe of $20,000 divided among five justices who concurred in the majority opinion and two who dissented. Grimes thereafter undertook all reasonable means to get some official action taken with regard to his reasonable belief of the bribery. This included going

to the county attorney of Oklahoma County, Oklahoma, the chairman and members of the Judiciary Committee of the House of Representatives of the Oklahoma Legislature, five different governors of Oklahoma and presidents of the Oklahoma Bar Association. He also furnished information to the Intelligence Unit of the Internal Revenue Bureau of the Treasury Department of the United States and the Department of Justice. Petitioner had learned that Harris L. Danner, a judge of the Supreme Court of Oklahoma at the time the opinion in the above case was rendered, had informed the Intelligence Unit of the Internal Revenue Bureau in Oklahoma City that a $20,000 bribe had been paid for the above decision and was divided seven ways on the nine man Supreme Court; and that all federal income taxes due on the $20,000 bribe were paid and falsely reported as farm income on the judges' income tax returns. (Tr. 6, p. 11) Danner "committed suicide" the day after he furnished this information.

No official action resulted from Grimes attempts to get something done about the bribery that he knew existed in the Oklahoma Supreme Court. Approximately 15 years after the decision in the above named case Grimes filed a petition for writ of certiorari before this Honorable Court, in which petition he related many of the facts to support his belief of bribery. The petition was denied 349 U.S. 903, 99 L. Ed. 1240, 75 S. Ct. 580 (1955). It is conceded that petitioner may have been in error in his belief that this Honorable Court could assert its original jurisdiction over the Supreme Court of Oklahoma, and he may have been in error that there is some basis in the due process and equal protection clauses

of the Fourteenth Amendment to give him some relief in that case, but in the light of the facts that are now known no one can doubt his sincerity in trying to get something done about that 1940 case by appealing to the broad discretionary powers of this Honorable Court.

Although petitioner reported his belief of bribery to several presidents of the Oklahoma Bar Association, no action was taken by the Oklahoma Bar Association to investigate the claims of bribery. Instead, the Executive Council of the Oklahoma Bar Assocition instigated disbarrment proceedings against petitioner after some pointed remarks were made by Federal Judge Ross Rizley, of Oklahoma as to the duty of the Oklahoma Bar Association to investigate the conduct of Grimes in charging certain judges of the Oklahoma Supreme Court with bribery. *(State v. Grimes*, 354 P. 2d 1080 (Sup. Ct. Okla. 1960 at p. 1083)).

The Executive Council of the Oklahoma Bar Association lodged a complaint against petitioner for acts of alleged misconduct and a trial examiner was appointed by the Executive Council. The trial examiner filed a written report with findings and recommendations with the Oklahoma Supreme Court; the Supreme Court entered an order disbarring Grimes from the practice of law in the State of Oklahoma. *State v. Grimes*, 354 P. 2d 1080 (1960).

Sitting on the Oklahoma Supreme Court at the time Grimes was disbarred were Justices N. S. Corn, supernumerary, who since has been convicted of Federal income tax evasion; (Corn has now confessed that he accepted bribes since 1936 to influence his decision in many Oklahoma

Supreme Court cases, and named at least five other judges who also received bribes); Napoleon Bonaparte Johnson, who has been impeached by the State Senate of Oklahoma on bribery charges and Earl Welch, who was convicted for federal income tax evasion and sentenced to a three-year term in the penitentiary and fined $13,500 for evasion of about $13,000 in taxes for the years 1957 through 1961. Certiorari was denied by the United States Supreme Court on November 21, 1966, in Welch's case.

The Executive Council of the Oklahoma Bar Association at the time it instigated disbarrment proceedings against Grimes, consisted of 15 members, nine of whom are appointed by the Supreme Court of Oklahoma, the President and the Vice-President of the Oklahoma Bar Association, three members are selected by the House of Delegates of the Oklahoma Bar Association, and one member is from the Board of Bar Examiners who is designated by said Board. The Board of Bar Examiners consists of nine members who are appointed by the Supreme Court of Oklahoma. Of the 15 members of the Executive Council nine are appointed directly, and one indirectly by the Supreme Court of Oklahoma, giving the Supreme Court the appointment of 10 of the 15 members of such Council.

The Rules also provide for a Central Committee which is created out of the membership of the Executive Council and which exercises all the powers of the Executive Council when the Council is not in session. The Central Committee is composed of five members, three to be designated by the Supreme Court, the President of the Association, and one

member designated by the three members elected by the House of Delegates. Three members of the Central Committee constitute a quorum. (Title 5 Okla. Stat. Ann. Appendix 1. Pertinent sections as they were promulgated by the Oklahome Supreme Court are printed in Appendix B infra).

III. How This Case Arose In Tenth Circuit Court of Appeals.

On November 6, 1964, Floyd L. Rheam, an Oklahoma attorney and one of the battery of attorneys representing Judge Stephen F. Chandler in *O'Bryan v. Chandler*, 352 F. 2d 987 (10th Cir. 1965) cert. denied while that case was on appeal in the Tenth Circuit Court of Appeals wrote a letter to the Clerk of the Tenth Circuit pointing out that Harlan E. Grimes' name appeared as Attorney for O'Bryan, and pointed out that Grimes had been disbarred in the State of Oklahoma and quoted Rule 7(3) of the Rules of the United States Court of Appeals for the Tenth Circuit. (Tr. -1)

On January 13, 1965, the Tenth Circuit entered an order in which it quoted the order of the Supreme Court of Oklahoma disbarring petitioner and then ordered that petitioner be suspended from the practice of law in that court until further order and requiring Grimes to show cause in writing within 30 days why he should not be disbarred from further practice in the court (Tr. -3).

Grimes filed a detailed answer (Tr. -4) which may be summarized as follows: He stated that members of the Supreme Court of Oklahoma of accepting a bribe of $20,00 in the case

of State v. Board of Education of Oklahoma City, 186 Okla. 665, 99 Pas. 2d 876 (1940); that the decision of the Supreme Court of Oklahoma in the case of *Marshall v. Amos*, 300 P. 2d 990, was corrupt and that a bribe of $25,000 was paid to five members of the Supreme Court of Oklahoma for their decision by A. O. Cargill, an Oklahoma City lawyer who has since been convicted of perjury charges (Tr. 4, p. 3).

Petitioner also stated that in the case of *Selected Investments Corporation v. Oklahoma Tax Commission*, 309 P. 2d 267, Justice N. S. Corn, Justice Napoleon Bonaparte Johnson and Justice Earl Welch, all of the Supreme Court of Oklahoma, accepted bribes in the total amount of $150,000 to influence the decision of that case, and that the money received by Justices Corn and Welch in that case was an element in the trial and conviction of Corn and Welch for income tax evasion. (Tr. -4, p, 3, 4)

On April 9, 1965, the Tenth Circuit entered an order appointing a committee of three Oklahoma City attorneys to hear and make recommendations to the court to hear and determine the matter of whether petitioner should be disbarred, and also appointed a lawyer of Oklahoma City to investigate and present evidence to the Committee. Petitioner had requested that the Court appoint a committee from outside of the State of Oklahoma endowed with power of subpoena and to administer oaths and power to secure official files necessary for the investigation of his charges, (Tr. -4, p. 4, 5) This request was not granted.

VI. Reasons For Granting the Writ

1. The Writ Should Be Granted Because

A Grave Reason Exists In This Case To Refuse To Allow The Disbarrment Of Petitioner By The Corrupt Oklahoma Supreme Court To Cause His Disbarrment In The Federal Courts.

It is submitted that the facts of this case bring it within the principles of *Selling v. Radford*, 243 U.S. 46, 61 L. Ed. 585, 37 S. Ct. 377 (1917). There it was said that where there was a disbarrment by a state court, the federal court nevertheless had a duty to examine the case on its own merits and should recognize the condition created by the judgment of the state court unless "* * * one or all of the following conditions should appear * * * (3) that some other grave reason existed which should convince us that to allow the natural consequences of the judgment to have their effect would conflict with the duty which rests upon us not to disbar except on the conviction that, under the principles of right and justice, we were constrained to do so."

Indeed a "grave reason" exists in this case not to allow the natural consequences of the Oklahoma Supreme Court judgment to have its effect in the federal court. Grimes became convinced some of the members of the Oklahoma Supreme Court were accepting bribes. Grimes tried with every reasonable means to get some sort of official action taken to correct the deplorable situation. His attempts were from the lowest state level to the highest federal level. The only action taken was by the Oklahoma Bar Association Executive Coun-

cil, nine members out of fifteen which were directly selected by the Supreme Court. The action of the Executive Council was not to investigate the bribery charges; their action was to recommend that Grimes be disbarred. The Oklahoma Supreme Court entered an order of disbarrment. Sitting on the bench of the Oklahoma Supreme Court that disbarred Grimes were three judges who now stand convicted on charges arising out of bribes accepted to influence their decisions in Supreme Court cases. One of these convicted judges, N. S. Corn, in detailed confessions of his acceptance of bribes, furnished information leading to the probable belief that at least four other judges sitting in judgment on Grimes, also accepted bribes. This was the panel of judges who entered an order of impeachment against Grimes for accusing them of accepting bribes. Grimes' accusations were accurate beyond any doubt as to three of the judges. Grimes had probable cause to believe they were accurate with respects to all of the judges named. Grimes fulfilled his oath as an attorney under the first Canon of Ethics which reads

> "Whenever there is proper ground for a serious complaint of a judicial officer, it is the right and duty of the lawyer to submit his grievance to the proper authorities. In such cases, but not otherwise, such charges should be *encouraged* and the person making them should be *protected.*" (Emphasis supplied.)

The evidence conclusively shows that Grimes did submit his grievance to the proper authorities. Nothing happened. But Grimes was not encouraged or protected. Grimes was justified in believing that nothing happened principally because the Executive Council of the Oklahoma Bar Associa-

tion was completely dominated by judges of the Oklahoma Supreme Court through their own rules giving them the right to select nine out of the fifteen members. To make their control more rigid the judges of the Oklahoma Supreme Court had the right to select three out of the five members of the Central Committee which had all the powers of the Executive Council when the Council was not in session. To whom could Grimes report and get an impartial consideration of his grievance? The accused judges sat in complete control of the machinery presumably designed to handle such a matter.

Certainly Grimes' disbarrment by these guilty judges is a sufficient "grave reason" for this Honorable Court to refuse to allow the natural consequences of the Oklahoma Supreme Court disbarrment judgment have the effect of causing Grimes' disbarrment in the federal court. Certainly this disbarrment by these guilty judges is a sufficient "grave reason" to convince this Honorable Court that under the principles of right and justice Grimes should not be disbarred in the federal court.

2. *The Writ Should Be Granted Because*

Petitioner Produced Evidence Of Probable Cause To Believe That At Least Seven Justices Of The Supreme Court Were Guilty of Accepting Bribes Including the Three Convicted Judges

In the opinion of the court below it is stated * * * "In the written material Mr. Grimes has filed from the outset of this proceeding he repeatedly and unequivocally charges Justice

Halley, Blackbird and Davison of the Oklahoma Supreme Court with wrongdoing and with having received bribes, but he makes *no attempt* to substantiate these charges in *any way* and has not demonstrated in any manner that he had *any grounds* or *probable cause* whatever in making such assertions. He has not shown *any reasonable cause* to charge corruption against such members of the Oklahoma Supreme Court." (emphasis supplied) (Appendix A, p. 6)

These quoted statements are flatly contrary to the evidence and information petitioner furnished to substantiate his charges and show he has probable cause to make his statements. It is submitted that the effect of the opinion below in stating, petitioner "makes no attempt to substantiate these charges in any way and has not demonstrated in any manner that he has any ground or probable cause whatsoever for making such assertions," was to cast upon petitioner the burden to prove the truth of his statements beyond a reasonable doubt. Such a burden in a situation like this is an impossible one for a private citizen to carry. Petitioner has no subpoena powers nor powers to place witnesses under oath and cross-examine them. Petitioner did attempt to better substantiate his claims, ask the court below to appoint an impartial committee to hear him from ouside the State of Oklahoma and to give an impartial committee sufficient legal powers to really investigate the situation.

It is submitted a reading of the excerpts from the testimony of former Judge N. S. Corn; (Supp. Tr. -5, 6, 7) H. G. Marshall; (Supp. Tr. -7) Hugh A. Carroll; Supp.

Tr. -4) and Titus Haffa produces reasonable cause to believe that petitioner has some bases for his claims. A summary of this evidence in the record follows:

Part of the evidence submitted by Petitioner was the transcript of testimony of N. S. Corn, former Justice of the Supreme Court, taken in the case of *United States v. Cargill* No. 65-27-CR, in the United States District Court, Western District of Oklahoma. Cargill was convicted of perjury charges, for telling a Federal Grand Jury that he, Cargill, had never bribed a member of the Oklahoma Supreme Court. This case is now on appeal before the Tenth Circuit.

Corn testified that his financial dealings with Cargill began in 1936; that Cargill told him he thought Corn would make a good judge and that he would like to have Corn friendly enough to go along as a "sixth man on opinions." When Corn answered that since there were only nine members on the court, five members could render opinions any time and that he didn't think he would be doing Cargill much good going along as a "sixth man." Cargill replied that he liked to win cases by a fair majority and always liked to have some extra votes on an opinion, in fact he liked to have all of the votes; that he thought that Corn would be the kind of man they would like to keep on the court, and he didn't think they would have any trouble keeping Corn on the court if Corn was properly financed; that he would go ahead and furnish Corn all the money needed when he ran for reelection. So the agreement was made that Cargill would

build up a campaign fund to begin with and furnish Corn $1,000 every time he ran for office if he would go along as a sixth man on opinions. (Supp. Tr. -5, pages 3, 4, 5, 6 as numbered in original trial transcript)

The method of operation of this sordid bribery scheme was described by Corn as follows:

Corn was advised as to cases in which Cargill was interested by Cargill calling over the telephone and saying "Get your pencil and paper." Cargill would then give Corn the number and style of the case and would say "Follow the majority" or "follow the crowd."

There were so many cases that Cargill called Corn on that Corn did not have independent recollection of the style or names of all of the different cases.

Corn carried out this original agreement with Cargill from 1936 until 1955. Cargill carried out his original agreement too. He built up a campaign fund of $1,500 to begin with and then furnished Corn with $1,000 each time he ran for office. (Supp. Tr. -5, pages 6, 7)

In addition to this initial agreement to go along as a sixth man on opinions in which Cargill was interested. Corn then testified specifically as to three other cases for which he received larger amounts. These cases were *Marshall v. Amos* (300 P. 2d 990, 1956 opinion by Halley, with Johnson, Welch, Corn and Blackbird concurring and Williams, Davidson, Jackson and Hunt dissenting), *Selected Investment Corporation v. Oklahoma Tax Commission*, (309 P. 2d 267, 1957, opinion by Welch, with Corn, Davidson, Johnson, Wil-

liams and Carlile concurring and Blackbird and Jackson dissenting, and *The Oklahoma Company v. O'Neal, et al.*

The details of the bribery in the case of *Marshall v. Amos* are that sometime in 1956 Cargill called Corn and said "Get your pencil and paper. I want to give you a case." Cargill then said he had a big deal; $25,000 to be divided six ways; that he would give Corn $4,000 if "I would vote for an opinion that would be favorable to reversing the judgment of the trial court." Corn told Cargill that he would do so. Corn asked Cargill who else was going along on the opinion and Cargill replied "the two Indians, *Davison, Halley* and *Blackbird.*" The two Indians were Johnson and Welch because they were the only two Indians on the court. (Supp. Tr. -5, pages 8, 9, 10)

This testimony under oath is a basis of reasonable cause to believe that Judges Davison, Halley and Blackbird accepted bribes to influence their decision in *Marshall v. Amos.*

Corn did vote to reverse the case of *Marshall v. Amos* and received $4,000 in cash in one hundred dollar bills from Cargill several days after the mandate went down.

A summary of Corn's testimony regarding the bribery in the Selected Investment case is as follows: This transaction was with Hugh Carrol initially, who called Corn one evening and told him he wanted the case reversed and that he would give $150,000 to get it reversed. Corn took the matter up with Cargill and also Judges Johnson and Welch, making arrangements with them that he would give them $7,500 apiece if they would go along on the opinion. Corn then made

a deal with Cargill, the briber, that he would give Cargill $2,500 if Cargill would get Judge Carlisle to vote for the opinion. Cargill agreed, saying that Carlisle would go along because Carlisle voted anyway he wanted him to. Corn asked Cargill to take it up with Carlisle to make sure it would be all right. A few days later Cargill called and said he had taken it up with Carlisle and that Carlisle had said it would be all right and that Carlisle did vote in favor of Selected Investments Corporation. Judge Corn later on paid Cargill the agreed $2,500. (Supp. Tr. -5, pages 14, 15, 16, 17)

Another basis of probable cause for petitioner to believe other judges of the Supreme Court of Oklahoma were guilty of taking bribes is found in the affidavit of Ned Howell taken on February 5, 1959. Howell had known Henry G. Marshall, one of the beneficiaries of the bribe in the *Amos v. Marshall* case for about 30 years, and had talked with Marshall about the case many times; that after the case was tried and was pending an appeal, Marshall said that he had to have the payment of $30,000 to Cargill guaranteed in order to get the case reversed; that in the fall of 1956 Marshall had told Howell that Marshall, Cargill and Judge Halley met at Cargill's home after the appeal was filed and Judge Halley told them it would take $25,000 for the court to reverse the *Amos v. Marshall* case (pp. 24, 25, Tr. -6). Marshall further told Howell, in November 1956, there was a conversation between Marshall, Judge Blackbird and Mrs. Blackbird while the case was pending in the Supreme Court of Oklahoma to the effect that Judge Blackbird did not want to vote against Amos but Mrs. Blackbird told her husband "If you

don't take the $5,000 I'm going to leave you"; that she wanted the Cadillac the $5,000 would buy her (p. 26, TR. -6).

In another affidavit by Howell he stated Marshall told him that he, Marshall, knew in advance which justices were going to vote for him and which justices were going to vote against him; that they delayed the judgment so long that it seemed like there was going to be a "killing over the judgment"; that Justice Hunt raised so much hell over the decision after he was appointed, that Denver Davison voted for Westcott (another bribed decision) after he, Davison, had voted against him, Marshall, in the *Marshall v. Amos* case. Marshall repeated that it cost him $30,000 to get the case reversed. Howell also said that Marshall told him soon after W. A. Carlisle was appointed by the Supreme Court "Now Cargill is on the Supreme Court, solider than ever." (Tr. -6, p. 26, 27).

An additional affidavit by Ned Howell and C. L. Brandon relates their meeting at H. G. Marshall's home in Oklahoma City on February 19, 1959, because Amos had employed a lawyer from Texas (petitioner Grimes) and was bringing a damage suit against Marshall; that Marshall again stated that he got the case reversed by giving $30,000 as a gift to O. A. Cargill; that he originally brought the money in cash, but Cargill refused to accept it, stating "Get me a Cashier's Check for $30,000"; that Marshall went to Wichita Falls and got a Cashier's Check for $30,000, (Tr. 6, p. 9) gave it to Cargill who gave him a receipt showing that Cargill had represented Marshall since 1928 and had not been paid anything during all that time. Marshall also said that the lawyer

(petitioner Grimes) that Amos has has tried to expose the Supreme Court before and that all the courts and lawyers hate him and he is going to fool around and get disbarred. (Tr. -6, pp. 28, 29) C. L. Brandon gave additional affidavits supporting the information supplied in the affidavits by Ned Howell. (Tr. 6, pp. 29, 30) These are some of the affidavits that petitioner had ready to file to support the damage suit he had brought on behalf of Amos in the federal court against Marshall et al. He attempted to file these affidavits during the hearing of the defendant's motion to dismiss before Judge Ross Rizley, but Judge Rizley refused to let him speak or to file the affidavits.

Petitioner points out that the information given in these affidavits in 1959 was confirmed by Judge Corn's testimony in *U. S. v. Cargill* in June 1965. This confirmation gives reasonable cause to believe that Judges Halley, Davison, [redacted] and Blackbird were guilty of accepting bribes in *Amos v. Marshall.*

Another attempt by petitioner to prove the truth of his charges that the decision in the case of *Amos v. Marshall* was the result of bribery was his filing in the Federal District Court for the Western District of Oklahoma as an attorney on behalf of the victim, Amos, a suit against the briber, Cargill, and the beneficiaries of the bribe, H. G. Marshall, Ida B. Marshall, and Titus Haffa. This suit was an action for damages to Amos caused by the above named defendants in winning the original law suit through the bribery of certain justices of the Oklahoma Supreme Court

in the amount of $25,000 with Cargill getting $5,000 for his fee in arranging the bribery.

The defendants in that case filed an application for order to stay the proceedings on the basis that the plaintiff was endeavoring to take depositions to harass and humiliate the defendants and therefore all action should be suspended until there was a hearing on the defendants' motion to dismiss. Judge Stephen S. Chandler entered an order of stay of proceedings, including the taking of any depositions by plaintiff until after the hearing upon the motion to dismiss. (Tr. -7, pp. 37-38).

Judge Ross Rizley sustained a motion to dismiss the cause by the defendants on the basis that the suit was a collateral attack on a judgment of the Supreme Court of Oklahoma, and Judge Rizley ended the hearing with a severe tongue-lashing aimed directly at Grimes saying "I don't care to hear from you * * * I don't know why you're still permitted to operate in this state. I can't understand why the State Bar hasn't taken action." (The remainder of the remarks to petitioner are set forth on pages 42-44, Tr, -6)

In an additional attempt to meet the requirement of "probable cause" to believe that certain justices of the Oklahoma Supreme Court had received bribes petitioner filed his "Application for Extension of Time to File Motion for Rehearing and for Order for Production of Documents" (Tr. -22) in which he requested the court to appoint a Master in Chancery to investigate all the bribes of the various members of the Supreme Court, in fact this was a

renewed request, that he believed that Harry L. S. Halley, presently acting Chief Justice of the Supreme Court of Oklahoma and Denver N. Davison, Justice of the Supreme Court of Oklahoma, both prepared and filed in 1964 amended tax returns covering unreported income for prior years and paid the tax penalty and interest thereupon and that the Internal Revenue Service conducted an investigation of the unreported income and has the information, facts and evidence such as to support an indictment except for the Statute of Limitations concerning the sources and purposes of the income and requested the court to take some action to have the Internal Revenue Service produce certified copies of their investigative reports and the amended returns of these two judges. (Tr. -22 p.)

Petitioner also renewed his request to have the Intelligence Unit of the Internal Revenue Service files obtained pertaining to the bribes paid to six members of the Supreme Court of Oklahoma in 1951, and also the Internal Revenue Service files containing information of the $20,000 bribe paid to Thomas L. Gibson of the Supreme Court and divided by Gibson with six other members of the Supreme Court. (Tr. -22, p.)

On pages 6 and 7 of the Advisory Recommendation of Duke Duval and John A. Johnson of the Committee it is stated:

> "The evidence he submitted to this committee failed to substantiate and did not tend to substantiate these renewed statements of purported fact against Justices Halley, Davison and Blackbird or any of them. The transcript of the Corn testimony at the trial of *United*

States v. Cargill reflects no personal knowledge by Corn that any of these three justices ever took a bribe." (Tr. -16, p. 6, 7)

This misleading statement was made in the face of the record of testimony by Corn in *United States v. Cargill*, as found on pages 9 and 10, R. 35, where Corn stated:

> "A day or two after that he [Cargill] called me back and said he had a big deal, $25,000 deal, to be divided six ways, that he would give me $4,000 if I would vote for an opinion that would be favorable to reversing the judgment of the trial court.
>
> "Q. What, if anything —
>
> "A. That's about what he said.
>
> "Q. What, if anything, did you say, judge?
>
> "A. I told him I would.
>
> "Q. What, if anything further did he say concerning the fact that the $25,000 had to be divided six ways?
>
> " A. Well, I asked him, I said, 'Who else is going along on that opinion?' He said, 'The two Indians, Davison, Halley and Blackbird' and I said, 'You think all five of them will go along?' 'O, yes,' he said, 'I have an attorney at Tulsa to take care of Halley, I have an attorney at Bristoa, that is going to take care of Blackbird, and, "he said, "I am taking care of Davison and the two Indians."
>
> "Q. What did you understand he meant by the 'two Indians,' judge?
>
> "A. Well that was Johnson and Welch; they were the only two Indians on the court."

(The quoted testimony is found in Supp. Tr. -5, pages 9, 10.)

The test to be applied to an evaluation of petitioner's statements is whether petitioner has established that he had

"reasonable grounds" to believe that his statements about the named judges of the Supreme Court of Oklahoma were true. *Thatcher v. United States*, 212 F. 801 (6th Cir. 1914), appeal dismissed 216 U.S. 625, 54 L. Ed. 642, 30 S. Ct. 577 and 241 U.S. 644, 60 L. Ed. 1218, 36 S. Ct. 450.

The evidence and information furnished to the court below support a reasonable conclusion that petitioner's statements of corruption of certain judges of the Oklahoma Supreme Court were based upon probable cause. The conviction of three judges of the Oklahoma Supreme Court established beyond question that petitioner had in fact and in truth "reasonable cause" to believe that there was corruption on the Oklahoma Supreme Court.

Petitioner asks this Honorable Court to apply the rationale of its decision in *Theard v. United States*, 354 U.S. 278, 1 L. Ed. 2d 1342, 17 S. Ct. 1274 (1957) where it was said

> "It is universally conceded that disbarment is not by way of punishment but is motivated for the public good."

Petitioner's tenacious belief of the existence of corruption on the part of some judges on the Oklahoma Supreme Court finally resulted in an exposure of that corruption. Surely petitioner should not be disbarred as a punishment for his efforts to expose the corruption that did in fact exist. His acts have redounded to the public good. The information he recorded in the pamphlet "Justice", (Tr. -6) the verbatim transcript of the legal action he attempted in the Federal District Court for the Western District of Oklahoma to expose the bribes that he knew had taken place in the case

of *Amos v. Marshall*, was turned over to the Internal Revenue Service of the United States Treasury Department. It was this information, correlated with other information arising out of the Selected Investment Company case, furnished to Internal Revenue Service and the Department of Justice in July 1962 by *Petitioner*, that enabled the Internal Revenue Service to finally secure sufficient evidence to effectuate the convictions of Corn, Welch and Cargill and to enable the Oklahoma Legislature to successfully impeach Johnson.

The treatment that petitioner has received at the hands of the Supreme Court of Oklahoma and its tightly controlled Executive Council of the Oklahoma Bar Association is a pitiful spectacle and a vicious indictment of those responsible.

It is a sad commentary on the state of the judiciary and the leaders of the bar in Oklahoma to point out that nothing yet has been done by the Supreme Court of Oklahoma to rectify the decisions now known to be the result of bribery. No attempt has been made by that court on which Judges Halley, Blackbird and Davison sit, to inquire into the integrity of its own judgments. Nothing has been done as was done by the Federal Court in *Root Refining Company v. Universal Oil Products Company*, 169 F. 2d 514. Least of all has anything of this nature been undertaken by the Executive Council of the Oklahoma Bar Association? No.

3. The Writ Should be Granted Because

The Order of the Court Below to Show Cause Why Grimes Should not be Disbarred Was

Based Upon the Oklahoma Supreme Court Disbarment, but the Court Below Entered its Disbarment Order on the Basis of Petitioner's Statements During the Proceedings Below.

It is clear from the record that the reason the Tenth Circuit Court of Appeals entered its order to show cause why petitioner should not be disbarred or suspended from practice of law before that court was based upon petitioner's prior disbarment by the Supreme Court of Oklahoma on March 8, 1960 (Tr. -3). The order below quoted the order of the Supreme Court of Oklahoma and then entered its own order that Grimes be suspended from the practice of law in that court until further order of the court and that Grimes show cause in writing filed with the clerk of the court within 30 days why an order should not be entered disbarring him and providing that he be prohibited from the further practice of law in that court. After petitioner filed his answer showing cause, the court below then entered its order appointing a committee to hear the matter and make recommendations (Tr. -5) There is nothing in any of the orders in the court below to indicate that the committee appointed was to take into consideration in its recommendations other than the circumstances surrounding the disbarment order of the Oklahoma Supreme Court. It is submitted that the committee and the court below went beyond the terms of the orders entered in this case when the recommendation for disbarment and the actual order of disbarment was based upon statements made by petitioner during the official proceedings in the court below. Such a

procedure is a denial of petitioner's rights under the First and Fourteenth Amendment of the United States Constitution.

CONCLUSION

In the light of all the facts now known and on judicial records, the judgment of the Supreme Court of Oklahoma disbarring petitioner was a fraudulent and a void judgment. The three judges, now known to be guilty did not disqualify themselves. Nor did any of the other judges that petitioner named as bribe-takers disqualify. Such a fraudulent and void judgment is subject to collateral attack. Petitioner asks this Honorable Court to take judicial notice of the criminal convicitions of the judges and grant this writ so that a detailed study can be made to determine if the guilty judges, sitting in judgment of Harlen E. Grimes, denied him the due process and equal protection of the law as guaranteed by the 14th Amendment to the Constitution of the United States. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944) While precedents for such an extraordinary situation as this do not appear to exist, this Honorable Court has said that due process is that process which is in accord with traditional concepts of fair play and substantial justice; that the due process clause exacts from the states all that is implicit in the concept of ordered liberty.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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Attorneys for Petitioner.

CERTIFICATE OF SERVICE

I, Harlan E. Grimes, hereby certify that I mailed ten copies hereof to Honorable Robert B. Cartwright, Clerk, United States Court of Appeals, Tenth Circuit, Denver, Colorado, with first class postage affixed on the fifth day of December, 1966.

HARLAN E. GRIMES

Harlan E. Grimes

APPENDIX A

In the Matter of Harlen E. Grimes

United States Court of Appeals

Tenth Circuit.

July 28, 1966.

Disciplinary proceeding respecting attorney which came on for hearing upon order to show cause why attorney should not be disbarred. The Court of Appeals held that accusations concerning integrity of members of state supreme court and other state judges, made by attorney who does not attempt to justify same in disciplinary proceedings, warrant disbarment as a member of United States Court of Appeals.

Judgment of disbarment.

Attorney and Client

Accusations concerning integrity of members of state supreme court and other state judges, made by attorney who does not attempt to justify same in disciplinary proceedings, warrant disbarment as a member of United States Court of Appeals. U.S. Ct. of App., 10th Cir. Rule 7, subd. 3, 28 U.S.C.A.

Harlan E. Grimes, pro se.

Before LEWIS BREITENSTEIN, HILL and SETH, Circuit Judges.

PER CURIAM.

This matter came on for hearing before this court upon an order to show cause why Harlan E. Grimes should not

be disbarred as a member of the bar of this court, and that his name be stricken from the rolls of attorneys authorized to practice before it.

The order to show cause was issued pursuant to Rule 7, paragraph 3, of the Rules of this court, in effect at the time, and Mr. Grimes was thereby suspended from practice before this court until further order. Rule 7 provided in part that where it is shown that a member of the bar of this court has been disbarred from practice in any state or has been guilty of conduct unbecoming a member of the bar of this court, he will forthwith be suspended before this court. This rule was set out in the order to show cause which was served upon Mr. Grimes.

Mr. Grimes filed an answer to the order to show cause. This answer contained a recitation of events which he asserts led up to his disbarment in the state of Oklahoma and other unrelated matters.

Following the filing of the answer, the court appointed a committee of three attorneys of Oklahoma City to hold hearings, to gather the evidence, and to make recommendations to the court. There was also appointed an attorney to investigate and to present the matter to the committee. Public hearings were held and the committee received exhibits offered by Mr. Grimes and others. The transcript of the Oklahoma state disbarment proceedings was likewise submitted to the committee and became a part of the record together with the other exhibits. After the hearing Mr. Grimes filed a document entitled "Answer to Undesignated

Portions of Transcript of Record in State of Oklahoma, ex rel., Oklahoma Bar Association vs. Harlan E. Grimes," which accused several present members of the Oklahoma Supreme Court and other judges with having received bribes or conspiring to do so.

The committee thereafter filed a report with this court which described in detail the findings of the committee and its conclusions. This report was signed by two members of the committee. The third member of the committee filed a minority report. The majority report recommended that Mr. Grimes be disbarred, pointing out his Oklahoma disbarment and the accusations made against several judges during the committee proceedings. The minority report recommended that he be not disbarred for the acts which led to the state disbarment, but that he be temporarily suspended by reason of statements and accusations he made during the course of the investigation.

The record shows that Mr. Grimes is a resident of Texas having left Oklahoma and the active practice of the law many years ago. He is not admitted to practice in Texas. The committee also stated that during the course of their hearing Mr. Grimes indicated that he did not intend to return to the active practice of law, and he did not intend to apply for reinstatement as a member of the Oklahoma bar.

Thereafter Mr. Grimes filed an answer to the committee report with a motion to strike the report. He further filed

an addendum to his answer to the report, a brief in support of a Motion to Declare Certain Judgments of the Supreme Court of Oklahoma Void, and other material.

This court thereafter held a hearing and heard oral argument by Mr. Grimes.

The record shows the Oklahoma Bar Association or its representatives commenced state disbarment proceedings against Mr. Grimes, asserting that he had published a pamphlet entitled "The Secret Bribe of $20,000," accusing members of the Supreme Court of the state of Oklahoma with having received a bribe for the rendering of an opinion. Other accusations were made by him against the court generally. The Oklahoma Bar Association held a hearing on the complaint, having given Mr. Grimes due notice thereof, but he declined to attend or offer evidence at the hearing to support his accusations or defend himself. Following the hearing, the Oklahoma Bar Association recommended that Mr. Grimes be disbarred, and the Oklahoma Supreme Court thereafter entered an order disbarring him.

Some time following the disbarment of Mr. Grimes by the state of Oklahoma, and during the course of a bankruptcy proceeding, an investigation was made which disclosed the fact that bribes had been paid to Justice N. S. Corn of the Supreme Court of Oklahoma. Justice Corn and Justice Earl Welch were indicted on charges of evading income taxes. Justice Welch was convicted of the charge, and an appeal of his conviction is pending in this court. Justice Corn entered a plea of *nolo contendere* and was sentenced to prison

on the charge. While in prison he made a detailed confession of his bribery. Justice N. B. Johnson of the Oklahoma Supreme Court was impeached by the Oklahoma Legislature. These three Justices were on the Supreme Court of the state of Oklahoma and all or some of them participated in the order disbarring Mr. Grimes.

Following the admission by former Justice N. S. Corn of his acceptance of bribes, and the implication of two other members of the court, an intensive investigation of all members of the Oklahoma Supreme Court was made. This was done by a citizens committee appointed by the Governor of Oklahoma, by a legislative investigating committee, and by the Oklahoma Bar Association. These investigations made fiindings that Justices Halley, Davison and Blackbird (and others not here concerned) were innocent of any wrongdoing and were not implicated in the activities of the convicted or impeached members of the court.

In our opinion Mr. Grimes has failed to show cause why he should not be disbarred from further practice before this court. See Annot. 70 A.L.R. 2d 268. In the written material Mr. Grimes has filed from the outset of this proceeding he repeatedly and unequivocally charges Justice Halley, Blackbird and Davison of the Oklahoma Supreme Court with wrongdoing and with having received bribes but he makes no attempt to substantiate these charges in any way and has not demonstrated in any manner that he had any grounds or probable cause whatever for making such assertions. He has not shown any reasonable cause to charge corruption against such members of the Oklahoma Supreme

Court. The same is true as to his similar charges against other judges in Oklahoma. As indicated above, these assertions and accusations have been made repeatedly during the course of this proceeding, and following the disclosure of the results of the several investigations made by the Oklahoma investigative groups. Mr. Grimes presented no evidence or facts to support his accusations. These accusations are thus sufficient in themselves to demonstrate that Mr. Grimes should not be a member of the bar of this court. During these proceedings he has failed to show cause why he should not be disbarred, and has in fact shown cause why he should be disbarred.

As described above, the conduct of Mr. Grimes during the course of this hearing is sufficient to warrant his disbarment as an attorney of this court. It is not therefore necessary to discuss the effect of the disbarment by the Oklahoma Supreme Court since we do not reach that question.

We have considered the fact that the events upon which this action is based took place for the most part after the order to show cause was issued. However it is clear that these matters and issues were brought into the proceedings solely by Mr. Grimes, and described by him in detail in the written material he has filed. The exhibits he introduced indicate no intention to withdraw the statements. He had the opportunity to come forward with facts relating to these issues he interjected, but he did not do so. He submitted no facts and no evidence whatever to support his charges.

Mr. Grimes also during the course of this proceeding has filed an instrument which is in part a motion to declare void certain judgments of the Oklahoma Supreme Court in which Mr. Grimes appeared as an attorney. This matter has not been given consideration by this court as it is beyond its jurisdiction.

It is ordered that Harlan E. Grimes be disbarred as a member of the bar of this court, and that his name be hereby stricken from the rolls of the attorneys who are authorized to practice in this court.

The committee appointed by the court to gather the evidence and to report, and the attorney appointed to investigate have performed an outstanding service to the profession. The court appreciates their willingness to give their time to such a difficult and unhappy task.

MURRAH, Chief Judge, and HICKEY, Circuit Judge, not participating.

APPENDIX B

ARTICLE IV

Section 1. EXECUTIVE COUNCIL: The governing body of the Association shall be an Executive Council of fifteen active members of this Association, selected as follows:

(a) Three members selected by the House of Delegates for a term of three years, one of whom shall be selected at each annual meeting of said body.

(b) Nine members appointed by the—Supreme Court, one for each Supreme Court Judicial District, for a term of three years; three of such members to be named by the Supreme Court each year.

(c) One member of the Board of Bar Examiners, selected by the Board for a term of two years.

(d) The President and Vice-President of the Association, during their terms of office.

(e) After January 1, 1959, the President-Elect of the Association shall be a member of the Executive Council and its membership shall be increased to sixteen.

The members of the Executive Council at the time of adoption of these rules shall continue in office until their respective terms as provided by existing rules shall expire, and until their successors shall be selected. A quorum of the Executive Council shall consist of eight members. A majority of a quorum shall suffice to carry any action of the Council, except that recommendations for any amendment to these rules must receive the vote of a majority of all members.

Section 2. CENTRAL COMMITTEE: To facilitate the work of the Association, there is created a Central Committee out of the membership of the Executive Council which shall have and exercise all the powers of the Executive Council when the Council is not in session. The Central Committee shall be composed of five members, three to be designated by the Supreme Court, the President of the Association, and one member designated by the three members elected by the House of Delegates. Three members of the Central Committee shall constitute a quorum.

Section 3. OFFICERS OF THE EXECUTIVE COUNCIL AND CENTRAL COMMITTEE: The President and Executive Secretary of the Association shall be, respectively, Chairman and Recording Secretary of the Executive Council and of the Central Committee.

Section 4. MEETINGS OF EXECUTIVE COUNCIL: The Executive Council shall meet at the offices provided for it at Oklahoma City or at such other place as it may elect, twice each year and at such other times as it or the Central Committee shall determine. The Central Committee shall meet at the offices provided for it at Oklahoma City, once each month, except the months when the Executive Council is meeting, and at such time and place as fixed by the Central Committee. Special meetings of the Executive Council or of the Central Committee may be called at other times upon three days' notice by mail, either upon the call of the Chairman or upon the call of three members, the notices to be mailed by the Executive Secretary to each member.

Section 5. FILING VACANCIES: When there occurs any vacancy of the Executive Council, the vacancy shall be filled by the same authority which designated the member whose place has become vacant. In case of vacancy or temporary absence, disqualification or inability to act of any member of the Central Committee, the Supreme Court may fill such vacancy or designate some eligible person to act in such capacity temporarily, or in the case of vacancy, to serve the remainder of the term so vacated.

Section 6. EX-OFFICIO MEMBERS OF THE HOUSE OF DELEGATES: Each member of the Executive Council shall be ex-officio a member of the House of Delegates.

Section 7. GENERAL WORK OF EXECUTIVE COUNCIL AND CENTRAL COMMITTEE: The Executive Council or Central Committee may perform such duties not specifically enumerated herein and may make such investigations, not inconsistent with these rules, as they reasonably believe should be made or as they may be directed to perform or make by the Supreme Court.